

REMARKS

Applicants respectfully request reconsideration of the application in view of the reasons that follow.

I. Status of the Claims and Amendments

Claim 6 is canceled without prejudice or disclaimer.

Claims 5, 7, and 8 are amended. Exemplary support for the revision of claim 5 can be found in canceled claim 6 and original claim 5. Claims 7 and 8 are amended to place the claims in a form typical of U.S. practice. No new matter is added.

Claims 15-17 are added. Exemplary support for claim 15 can be found in original claim 8. Exemplary support for claim 16 can be found on page 4, line 23, of the specification. Exemplary support for claim 17 can be found on page 4, lines 11-14. No new matter is added.

Upon entry of the amendments, claims 1-17 will be pending, and claims 1-4 and 9-14 are withdrawn. Thus, claims 5-8 and 15-17 will be pending and subject to examination.

II. Claim Rejections – 35 U.S.C. § 102(b)

A. U.S. Patent No. 5,498,439 to Bonner

Claims 5-8 stand rejected for alleged anticipation by U.S. Patent No. 5,498,439 to Bonner. According to the examiner, “Bonner teaches an encapsulation material comprising casein as protein and modified starch as treated carbohydrates (paragraph claims 1, 3, and column 3, line 50 and 51).” (Office Action at ¶ 6.) Applicants respectfully traverse this ground of rejection.

Bonner generally refers to encapsulation of a flavor oil in a gel. (Bonner at abstract.) Claim 3 refers to a litany of possible encapsulation gel materials, and the examples use a mixture of gelatin and carrageenan to form the gel. Carrageenan, however, is not “a carbohydrate treated to make emulsions of the encapsulation material stable and to increase

the number of sugar reducing groups in the carbohydrate,” as required by the claims. Nothing in Bonner suggests the use of such a carbohydrate.

Bonner states that “the colloid gel may require two or more gelling polymers to obtain the desired properties of the gel matrix.” (Bonner at col. 3, ll. 50-53.) Yet Bonner contains no suggestion that a carbohydrate and food grade protein should be combined, as claimed.

Moreover, Bonner contains no suggestion that the gel could survive the stomach for delivery of the flavor oil to the gastrointestinal track. Because Bonner is not aimed at delivery to the GI tract, there is no reasonable basis to believe that its gel has such properties.

For at least these reasons, applicants respectfully request reconsideration and withdrawal of this ground of rejection.

III. Claim Rejections – Double Patenting

Claims 5-8 stand provisionally rejected on the ground of non-statutory obviousness-type double patenting as allegedly unpatentable over claims 1, 2, 5, and 6 of co-pending application no. 10/573,784. According to the examiner, “[i]t is obvious that the encapsulation material claimed in the instant claims 5-8 is as same as the film forming suspension.” (Office Action at ¶ 14.) Applicants respectfully traverse this ground of rejection.

Claims 1, 2, 5, and 6 of the ‘397 application contain no hint that a protein should be combined with “a carbohydrate treated to make emulsions of the encapsulation material stable and to increase the number of sugar reducing groups in the carbohydrate” to form an encapsulation material. Moreover, the claims of the ‘397 application do not suggest that an encapsulation material should be made to survive the stomach and release its contents in the GI tract. Accordingly, the claims of the ‘397 application cannot render obvious the claimed invention.

For at least these reasons, applicants respectfully request reconsideration and withdrawal of this ground of rejection.

CONCLUSION

Applicants submit that the present application is in condition for allowance. Favorable reconsideration is requested, therefore. Also, Examiner Yu is invited to contact the undersigned directly, should any issue warrant further consideration.

The Commissioner is hereby authorized to charge any additional fees, which may be required under 37 C.F.R. §§ 1.16-1.17, and to credit any overpayment to Deposit Account No. 19-0741. Should no proper payment accompany the response, then the Commissioner is authorized to charge the unpaid amount to the same deposit account. If any extension is needed for timely acceptance of submitted papers, then applicants hereby petition for such extension under 37 C.F.R. § 1.136 and authorize payment of the relevant fee(s) from the deposit account.

Respectfully submitted,

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